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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

FLIR Systems, Inc., an Oregon corporation,

CASE NO. CV10-971 HU

Plaintiff,

v.

Fluke Corporation and Sierra Media, Inc.,

Defendants.

**DEFENDANT SIERRA MEDIA, INC.’S
MOTION TO DISMISS COUNTS TWO,
THREE, FOUR AND FIVE OF THE
FIRST AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM**

(ORAL ARGUMENT REQUESTED)

LOCAL RULE 7.1 CERTIFICATION

Counsel for Sierra Media, Inc. (“Sierra Media”) conferred in good faith by telephone with counsel for FLIR Systems, Inc. (“FLIR”) prior to the filing of this Motion. The parties were unable to resolve the dispute presented by this Motion.

MOTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Sierra Media respectfully moves to dismiss Counts Two, Three, Four and Five of the First Amended Complaint filed against it by Plaintiff for failure to state claims upon which relief may be granted. Sierra Media moves against the Counts in the Complaint as follows:

1. Count Two: FLIR has not stated a claim for trade libel/commercial disparagement because it has not alleged sufficient facts regarding any statement by Sierra Media or that any statement by Sierra Media was libelous.
2. Count Three: FLIR has failed to state a claim for intentional interference with prospective economic relations because it has not alleged sufficient facts regarding any intentional interference by Sierra Media into a prospective economic relationship for FLIR.
3. Count Four: FLIR has failed to state a claim for civil conspiracy, because the alleged conspiracy is not founded on any sufficiently pleaded Oregon tort, because it has not pleaded with requisite particularity, and because it has failed to adequately allege facts supporting the existence of a conspiratorial agreement.
4. Count Five: FLIR fails to state a claim for aiding and abetting because the alleged aiding and abetting was not in furtherance of any sufficiently pleaded Oregon court, and because FLIR has not properly alleged facts sufficient to support a claim for aiding and abetting liability, including on the issue of Sierra Media's knowledge that its co-defendant Fluke intended to commit a tort against FLIR.

Sierra Media therefore respectfully moves that the Counts Two, Three, Four and Five against Sierra Media be dismissed.

DATED this 27th day of January, 2011.

Respectfully submitted,

s/ Benjamin N. Souede
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